

6 Official Opinions of the Compliance Board 47 (2008)

**MINUTES – APPROVAL – ONE-MONTH DELAY,
JUSTIFIED BY SPECIAL CIRCUMSTANCES – FAILURE OF
PUBLIC BODY TO APPROVE DRAFT MINUTES VIOLATED
ACT – NOTICE – TIMING – POSTING SIX DAYS IN
ADVANCE AT MEETING, COUPLED WITH
ANNOUNCEMENT DURING PRIOR MEETING, HELD TO
COMPLY WITH ACT**

August 19, 2008

Craig O'Donnell
Kent County News

The Open Meetings Compliance Board has considered your complaint that the Kent County Planning Commission violated the Open Meetings Act by failing to provide notice in advance of a special meeting held April 22, 2008, and failing to approve minutes of that meeting and its previous regular meeting, April 3, 2008, at the Planning Commission's next regular meeting, held May 1, 2008. We also considered the Planning Commission's practice with regard to maintaining minutes for certain previous special meetings.

For the reasons explained below, we find that the Planning Commission satisfied the requirements of the Act in providing notice in advance of the April 22 meeting. We further find that minutes of the April 3 and 22 meetings were timely adopted under the circumstances. However, while minutes of earlier special meetings were drafted, the Planning Commission failed to formally adopt them as required by the Open Meetings Act.

I

Complaint and Response

Your complaint alleged that the Kent County Planning Commission violated the notice requirements of the Open Meetings Act when it held a "special meeting" or "workshop" on April 22, 2008, to consider a zoning text amendment. Attached to the complaint was an article that appeared in the April 10, 2008, issue of the *Kent County News* which summarized the Planning Commission's April 3 meeting and indicated that, according to the County's Planning Director, a requested zoning text amendment would be revisited by the Planning Commission on April 22. The complaint cited the newspaper article as evidence that the Planning Commission did

not announce the date or time of the next meeting during its April 3 session while a representative of the press was present. Nor did a phone call to the Planning Office the day following the April 3 meeting reveal the time or location of the meeting.

Aside from the incomplete information in the paper about the April 22 meeting, “the public had no inkling a meeting was scheduled.” The complaint indicated that the *Kent County News* has informed county agencies that an e-mail message or facsimile transmission to the paper about special meetings “is more than adequate to satisfy the Act as far [as the *Kent County News* is] concerned.” The paper provides a “meeting box” for upcoming government meetings; Planning Commission agendas supplied to the paper are published in advance of the meetings. Apparently relying on the lack of notice, the complaint further alleged that, because the session involved a zoning matter, the “April 22 meeting ... was illegally closed despite the Act’s specific injunction that zoning matters are always to be discussed in open session.”

During the Planning Commission’s May 1 meeting, the complainant inquired whether there would be minutes of the April 22 session. You state that you were told by the chair that, “while staff keeps notes of workshop meetings,” the Commission does not keep minutes. The complaint further noted that the Planning Commission failed to approve minutes of its April 3 meeting on May 1; the only explanation was that “we don’t have minutes.” The complaint asserted that, given the cycle of regular Planning Commission meetings, minutes of both meetings should have been approved at the Planning Commission meeting held May 1.

In a timely response on behalf of the Planning Commission, Thomas Yeager, Esquire, denied any violation of the Act. According to the response, the time and location of the April 22 meeting was publicly announced during the public April 3 meeting. And during a Board of County Commissioners public meeting on April 8, the County’s Planning Director announced that the Planning Commission would meet on April 22. Included with the Planning Commission’s response was a copy of the minutes of its April 3 meeting documenting the announcement as well as two articles from the *Kent County News* written by the complainant indicating that the Planning Commission planned to meet on April 22. The response acknowledged that the Planning Commission does not know whether the complainant was in attendance April 3 at the time the April 22 meeting was announced, but the complainant was present during the County Commissioners’ meeting when the April 22 meeting was announced. The response noted that, during the pertinent period, an informal understanding existed between the Planning Director and complainant that “informal notice, including verbal notice, to [the complainant] of scheduling of meetings was sufficient to satisfy the Open Meetings Act’s requirements for providing notice to the press.” Given the complainant’s presence at the County Commissioners’ meeting and the newspaper articles two days latter, Planning Office staff believed

the complainant had received “actual notice of the date, time and place” of the April 22 meeting. Thus, staff did not send the *Kent County News* any additional notice.

According to the response, a notice of the April 22 meeting also was posted on April 16 on the doors of the County Planning, Zoning, and Housing Offices. This location has served “as the official location for posting public notices of meetings of the ... Planning Commission” since 1999. A copy of the notice was included with the response.

As to the allegations concerning minutes, the response indicated that “[l]ate approval of ... minutes is an unusual event.” The response reviewed the Planning Commission’s typical time frame for production of minutes as well as the circumstances that resulted in a delay, namely, an unusual workload during April, coupled with the additional meeting, and other factors. The response noted that the Planning Commission does keep minutes of special meetings which are approved at regular meetings of the Planning Commission in accordance with the Commission’s bylaws. Minutes for the April 3 and 22 meetings were approved at a regular meeting held June 5 and copies of the minutes for both meetings were included with the response.¹

II

Notice of April 22 Meeting

The Open Meetings Act requires a public body to give the public “reasonable advance notice” of a meeting governed by the Act. § 10-506(a).² Unless advance notice is given, a meeting is not in reality an open meeting. In terms of the method of giving notices, the Act allows public bodies significant flexibility. If the public is aware of the practice, a meeting notice can be posted on a website or a convenient public location at or near the meeting site. Notice can be given to representatives of the news media who regularly report on the sessions of the public body or the

¹ Following our receipt of the Planning Commission’s response, we received several supplemental communications from the complainant, including copies of minutes and meeting summaries from Planning Commission meetings held between December 2007 and May 2008 and a critique of the Planning Commission’s response. We did not submit these items to the Planning Commission for further response in this case because we felt the record was sufficient for our review. While some of the comments in the record might reasonably be said to reflect good practices, the focus of our review is whether the public body has satisfied the minimum requirements of the Act.

² All statutory references are to the Open Meetings Act, Title 10, Subtitle 5 of the State Government Article, Annotated Code of Maryland.

applicable government's activities. Notice can also be given by any other reasonable method. § 10-506(c); see 3 *OMCB Opinions* 264, 266-67 (2003).

The complaint focuses on the fact that the Planning Commission never provided the information required as part of a meeting notice to the *Kent County News* in advance of the April 22. Had it done so, details of the scheduled meeting apparently would have appeared in the local paper, consistent with prior practice. We commend the *Kent County News* in providing notices of government meetings as a service to the public. And as we recently recognized, the public benefits if notice of a public body's meetings is provided in a consistent manner. 6 *OMCB Opinions* 41, 46 (2008). However, a public body has no obligation to provide notice through a particular media outlet. Had the Planning Commission relied on the newspaper as the sole mechanism of notifying the public, we would view the informal process apparently employed as problematic in that it failed to ensure an internal mechanism to document that notice was in fact given. See § 10-506(b)(1) ("Whenever reasonable, a notice ... shall ... be in writing"). However, notices of Planning Commission meetings also have been routinely posted at the entrance to the County's Planning, Zoning, and Housing Offices at the County Government Center. Thus, we turn to whether the posting satisfied the Act.

Whether advance notice is "reasonable" depends on the specific facts, especially as to the time interval between the public body's decision to meet and the posting of notice. 5 *OMCB Opinions* 139, 142 (2007). The Attorney General's Office has recommended that notice of a future meeting be posted as soon as practicable after the public body has fixed the date, time, and location of the next meeting, a position we have long endorsed. Office of the Attorney General, *Open Meetings Act Manual* p. 20 (6th ed. 2006); 3 *OMCB Opinions* 85, 86-87 (2001). In this case, notice could have conceivably been posted as early as the morning of April 4, the business day immediately following the April 3 meeting. However, a notice satisfying the Act was not actually posted until April 16 – six days in advance of the April 22 meeting. While the notice could have been posted sooner, given that the date, time and location was announced during the course of a public meeting April 3 (albeit in the absence of media representatives), we find that the six-day period in which notice appeared satisfied the minimal requirements of the Act.³

³ The complainant asserted that neither he nor certain other individuals at the *Kent County News* were aware of the Planning Commission's practice of posting notice. However, given that the practice has been in place since 1999, we assume that those interested in the Planning Commission's activities would have been accustomed to the practice.

The complaint also focused on the lack of an agenda which the paper would have published had it been made available. However, the Open Meetings Act does not require advance release of an agenda. See 4 *OMCB Opinions* 168, 172 (2005) (while release of anticipated agenda commendable practice, failure to do so does not violate Act; thus, allegations in a complaint concerning the availability of agenda lack merit).

III

Minutes

A. *Special Meetings*

The Open Meetings Act requires a public body to produce written minutes following each meetings, reflecting, at a minimum, each item considered during the course of the meeting, the action taken in connection with each item, and each recorded vote. § 10-509(b) and (c)(1). Whatever label is attached to a meeting – whether a regular meeting, special meeting, workshop, or any other characterization – is immaterial. If a meeting is subject to the Act, minutes must be kept. 5 *OMCB Opinions* 50, 53 (2006).

Based on the record before us, it appears that detailed minutes were in fact prepared for special meetings held January 30, February 28, March 10, 2008. The fact that the documents were captioned “meeting summary” rather than “minutes” is not significant. However, because these minutes were apparently not adopted by the Planning Commission, they did not satisfy requirements of the Act. As we previously held, “[a]s a legal matter, the ‘minutes of a public body’ become such only after the public body itself has had an opportunity to review and correct the work of whoever prepared the draft...”. 3 *OMCB Opinions* 303, 306 (2003). Had the Planning Commission adopted the detailed summaries prepared by staff, it appears that they would have satisfied the Act.

The April 22 special meeting was treated differently. Detailed minutes were produced and signed by the Commission chair. We assume that the signature reflects that the body formally approved the document, thus, satisfying the obligation to have minutes of its meeting under provisions of the Act.

B. *Timing*

The complaint faulted the Planning Commission for the failure to adopt minutes for April 3 and 22 meetings at its regular meeting May 1. Minutes for both meetings were approved, however, on June 5.

The Open Meetings Act does not prescribe a precise time frame in which minutes must be approved. Rather, the Act speaks in terms of an “[a]s soon as practicable” standard. As we have previously advised, “[a]s a general rule, minutes should be available on a cycle paralleling the public body’s meetings, with only the lag time needed for drafting and review. 5 *OMCB Opinions* 14, 17 (2006). While we have cautioned that a public body cannot rely on limited staff time or competing priorities to avoid compliance with the Act, we also have recognized that there may be special circumstances that justify adoption of minutes at a later date. *Id.*; *cf* 3

OMCB Opinions 96, 97 (2001) (delay over five months “unacceptable”) and 3 *OMCB Opinions* 340, 342 (2003) (6 week period acceptable under circumstances). Thus, there will be cases where minutes cannot practicably be available at the next meeting. 4 *OMCB Opinions* 1, 5 (2004).

According to the Planning Commission’s response, minutes are typically approved at the next regular meeting in accordance with the Planning Commission’s bylaws. Our review of minutes of regular meetings of the Planning Commission for the first half of this year supports that view. However, we are told that an unusually high workload during the month of April, the additional meeting, and several contested matters occupying staff time resulted in the delay in preparation of minutes and there was no deliberate effort to delay public access. Given the Planning Commission’s explanation and that the delay appears atypical, we find no violation in the one-month delay.

IV

Conclusion

We find that the Planning Commission satisfied the requirements of the Act is providing notice in advance of the April 22 meeting. We further find that minutes of the April 3 and 22 meetings were timely adopted under the circumstances. However, the Planning Commission’s failure to formally adopt minutes of previous special meetings violated the Open Meetings Act.

OPEN MEETINGS COMPLIANCE BOARD

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